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In re Application of ROUXEL et al :  
U.S. Application No.: 10/587,908 :  
PCT Application No.: PCT/FR2004/003378 :  
Int. Filing Date: 23 December 2004 : DECISION  
Priority Date Claimed: 30 January 2004 :  
Attorney Docket No.: W51.12-0032 :  
For: MULTI-MODULATION RECEPTION :  
METHOD . . . :

This is in response to applicant's "Petition by Joint Inventor(s) Filing on Behalf of Other Joint Inventor(s) Who Refuse(s) to Join in Application or Cannot be Reached (37 C.F.R. § 1.47(a))" filed 18 June 2007.

**BACKGROUND**

On 23 December 2004, applicant filed international application PCT/FR2004/003378, which claimed priority of an earlier France application filed 30 January 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 09 September 2005. The thirty-month period for paying the basic national fee in the United States expired on 30 July 2006.

On 28 July 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 April 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 18 June 2007, applicant filed the present petition under 37 CFR 1.47(a).

### **DISCUSSION**

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

With regard to item (1) above, applicant has submitted a declaration signed by the available inventor on his own behalf and on behalf of the nonsigning inventor.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The petition states that joint inventor Damien Pouessel cannot be located. However, the petition does not adequately demonstrate that a diligent effort was made to find Pouessel. Although the petition shows that attempts were made to reach Pouessel by postal mail (see affidavit of Patrice Vidon), the petition does not establish that other methods of contacting Pouessel were attempted, e.g. by telephone, by electronic mail, and by searching public directories. Thus, it would not be reasonable to conclude at the present time that Pouessel cannot be located.

With regard to item (3) above, applicant has provided the requisite petition fee.

With regard to item (4) above, the petition states the last known address of the nonsigning inventor.

### **CONCLUSION**

For the reasons above, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely file a proper response will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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